
HOUSE BILL 2989

State of Washington 60th Legislature 2008 Regular Session

By Representatives Wallace and Hasegawa

Read first time 01/21/08. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to industrial insurance coverage for the owners of
2 drywall installation or finishing businesses; amending RCW 51.12.020
3 and 51.08.070; adding a new section to chapter 51.12 RCW; adding a new
4 section to chapter 51.04 RCW; and creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that there is
7 continued evidence of underreporting and nonpayment of workers'
8 compensation premiums by employers in the drywall installation and
9 finishing industry. This abuse is created when employers improperly
10 claim owner exemptions for individuals who are really workers and who
11 later claim and receive benefits provided for in Title 51 RCW.
12 Untangling this web of deceit is complicated and costly to the system
13 and often only comes to light when a claim for benefits is made. To
14 end this cycle of abuse the legislature therefore declares that all
15 owners of drywall installation and finishing businesses are subject to
16 mandatory coverage under Title 51 RCW.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 51.12 RCW
18 to read as follows:

1 (1) All owners of businesses engaged in the installation or
2 finishing of drywall are within the mandatory coverage of this title.

3 (2) In consultation with the advisory committee created under
4 section 5 of this act, the department shall adopt rules to implement
5 this section. Rules shall be designed to be the least burdensome to
6 employers and to encourage voluntary compliance.

7 **Sec. 3.** RCW 51.12.020 and 1999 c 68 s 1 are each amended to read
8 as follows:

9 The following are the only employments which shall not be included
10 within the mandatory coverage of this title:

11 (1) Any person employed as a domestic servant in a private home by
12 an employer who has less than two employees regularly employed forty or
13 more hours a week in such employment.

14 (2) Any person employed to do gardening, maintenance, or repair, in
15 or about the private home of the employer. For the purposes of this
16 subsection, "maintenance" means the work of keeping in proper
17 condition, "repair" means to restore to sound condition after damage,
18 and "private home" means a person's place of residence.

19 (3) A person whose employment is not in the course of the trade,
20 business, or profession of his or her employer and is not in or about
21 the private home of the employer.

22 (4) Any person performing services in return for aid or sustenance
23 only, received from any religious or charitable organization.

24 (5) Sole proprietors or partners, except as provided in section 2
25 of this act.

26 (6) Any child under eighteen years of age employed by his or her
27 parent or parents in agricultural activities on the family farm.

28 (7) Jockeys while participating in or preparing horses for race
29 meets licensed by the Washington horse racing commission pursuant to
30 chapter 67.16 RCW.

31 (8)(a) Except as otherwise provided in (b) of this subsection and
32 section 2 of this act, any bona fide officer of a corporation
33 voluntarily elected or voluntarily appointed in accordance with the
34 articles of incorporation or bylaws of the corporation, who at all
35 times during the period involved is also a bona fide director, and who
36 is also a shareholder of the corporation. Only such officers who

1 exercise substantial control in the daily management of the corporation
2 and whose primary responsibilities do not include the performance of
3 manual labor are included within this subsection.

4 (b) Alternatively and except as provided in section 2 of this act,
5 a corporation that is not a "public company" as defined in RCW
6 23B.01.400(~~((+21))~~) (24) may exempt eight or fewer bona fide officers,
7 who are voluntarily elected or voluntarily appointed in accordance with
8 the articles of incorporation or bylaws of the corporation and who
9 exercise substantial control in the daily management of the
10 corporation, from coverage under this title without regard to the
11 officers' performance of manual labor if the exempted officer is a
12 shareholder of the corporation, or may exempt any number of officers if
13 all the exempted officers are related by blood within the third degree
14 or marriage. If a corporation that is not a "public company" elects to
15 be covered under subsection (8)(a) of this section, the corporation's
16 election must be made on a form prescribed by the department and under
17 such reasonable rules as the department may adopt.

18 (c) Determinations respecting the status of persons performing
19 services for a corporation shall be made, in part, by reference to
20 Title 23B RCW and to compliance by the corporation with its own
21 articles of incorporation and bylaws. For the purpose of determining
22 coverage under this title, substance shall control over form, and
23 mandatory coverage under this title shall extend to all workers of this
24 state, regardless of honorary titles conferred upon those actually
25 serving as workers.

26 (d) A corporation may elect to cover officers who are exempted by
27 this subsection in the manner provided by RCW 51.12.110.

28 (9) Services rendered by a musician or entertainer under a contract
29 with a purchaser of the services, for a specific engagement or
30 engagements when such musician or entertainer performs no other duties
31 for the purchaser and is not regularly and continuously employed by the
32 purchaser. A purchaser does not include the leader of a group or
33 recognized entity who employs other than on a casual basis musicians or
34 entertainers.

35 (10) Services performed by a newspaper carrier selling or
36 distributing newspapers on the street or from house to house.

37 (11) Services performed by an insurance agent, insurance broker, or

1 insurance solicitor, as defined in RCW 48.17.010, 48.17.020, and
2 48.17.030, respectively.

3 (12) Services performed by a booth renter as defined in RCW
4 18.16.020. However, a person exempted under this subsection may elect
5 coverage under RCW 51.32.030.

6 (13) Except as provided in section 2 of this act, members of a
7 limited liability company, if either:

8 (a) Management of the company is vested in its members, and the
9 members for whom exemption is sought would qualify for exemption under
10 subsection (5) of this section were the company a sole proprietorship
11 or partnership; or

12 (b) Management of the company is vested in one or more managers,
13 and the members for whom the exemption is sought are managers who would
14 qualify for exemption under subsection (8) of this section were the
15 company a corporation.

16 **Sec. 4.** RCW 51.08.070 and 1991 c 246 s 2 are each amended to read
17 as follows:

18 (1) "Employer" means any person, body of persons, corporate or
19 otherwise, and the legal representatives of a deceased employer, all
20 while engaged in this state in any work covered by the provisions of
21 this title, by way of trade or business, or who contracts with one or
22 more workers, the essence of which is the personal labor of such worker
23 or workers. Or as a separate alternative, persons or entities are not
24 employers when they contract or agree to remunerate the services
25 performed by an individual who meets the tests set forth in subsections
26 (1) through (6) of RCW 51.08.195. For purposes of chapter 51.44 RCW,
27 "employer" also includes: (a) Any person or body of persons, corporate
28 or otherwise, who is within the mandatory coverage of this title under
29 section 2 of this act; and (b) the legal representatives of a deceased
30 person who is within the mandatory coverage of this title under section
31 2 of this act.

32 (2) For the purposes of this title, a contractor registered under
33 chapter 18.27 RCW or licensed under chapter 19.28 RCW is not an
34 employer when:

35 ((+1)) (a) Contracting with any other person, firm, or corporation
36 currently engaging in a business which is registered under chapter
37 18.27 RCW or licensed under chapter 19.28 RCW;

1 ~~((2))~~ (b) The person, firm, or corporation has a principal place
2 of business which would be eligible for a business deduction for
3 internal revenue service tax purposes other than that furnished by the
4 contractor for which the business has contracted to furnish services;

5 ~~((3))~~ (c) The person, firm, or corporation maintains a separate
6 set of books or records that reflect all items of income and expenses
7 of the business; and

8 ~~((4))~~ (d) The work which the person, firm, or corporation has
9 contracted to perform is:

10 ~~((a))~~ (i) The work of a contractor as defined in RCW 18.27.010;
11 or

12 ~~((b))~~ (ii) The work of installing wires or equipment to convey
13 electric current or installing apparatus to be operated by such current
14 as it pertains to the electrical industry as described in chapter 19.28
15 RCW.

16 NEW SECTION. **Sec. 5.** A new section is added to chapter 51.04 RCW
17 to read as follows:

18 (1) The drywall oversight committee is created to advise the
19 department on the development of rules to implement section 2 of this
20 act and to otherwise advise the department on issues affecting the
21 drywall industry.

22 (2) The committee shall be composed of the following eight members
23 to be appointed by the director: Two drywall contractors, two
24 construction related trade association representatives, and two labor
25 representatives.

26 (3) Members of the committee shall serve without compensation, but
27 shall be reimbursed for travel expenses as provided in RCW 43.03.050
28 and 43.03.060.

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